



MICROPYRETICS HEATERS INTERNATIONAL, INC.
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CINCINNATI OH 45215

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OCT 14 2008

OFFICE OF PETITIONS

In re Application of :
Vissa et al. :
Application No.: 10/726487 : DECISION ON
Filing or 371(c) Date: 12/04/2003 : PETITION
Title of Invention: FLEXIBLE DIE HEATER :

This is a decision in response to the Request Withholding of Abandonment," filed July 28, 2008. The request is properly treated as a Petition To Withdraw Holding of Abandonment under 37 CFR 1.181.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed July 5, 2005. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No complete and proper reply having been received, the application became abandoned on October 6, 2005. A Notice of Abandonment was mailed March 17, 2006.

Petition under 37 CFR 1.181

Applicant files the present petition and states, in relevant part, that a timely Change of Correspondence Address was filed on November 12, 2004. Applicants also assert that a timely reply to the Office action was filed on August 24, 2005.

Review of the Application File

A review of the application file reveals that in the application as-filed on December 4, 2003, inventors Ramgol Vissa, Venkata Burada and John Carson appointed Jayadeep Deshmukh to prosecute the application.

A Notice to File Corrected Application Papers was mailed on March 16, 2004. Applicants filed an unexecuted reply to the Notice on March 31, 2004.

A non-final Office action was mailed on July 8, 2004. A reply to the Office action was filed on September 21, 2004. The reply was executed by J.A. Sekhar, as Company Representative for the Inventors. Office records do not reveal that the inventors executed a Power of Attorney authorizing J.A. Sekhar to act on their behalf in this application.

The reply filed by Applicants on September 21, 2004, was noncompliant. Applicants were so notified in a Notice of Non-Compliant Amendment ("Notice"), mailed November 1, 2004.

In response to the Notice, Applicants filed an Amendment/Reply on November 12, 2004, again executed by J.A. Sekhar. Again there is no evidence in the application file that the inventors executed a Power of Attorney authorizing J.A. Sekhar to act on their behalf in this application.

Along with the Reply, Applicants filed a Change of Correspondence Address, attempting to change the correspondence address to Customer Number 46213. The Change of Correspondence Address was executed Dr. AA Vissa. Office records do not reveal that the inventors executed a Power of Attorney authorizing Dr. Vissa to act on their behalf in this application.

Applicant filed a Supplemental Response to the Office action on March 15, 2005. The Supplemental Response was executed by J. A. Sekhar.

This Office mailed a non-final Office action on July 5, 2005.

Applicants re-filed the Change of Address Form on July 14, 2005 (executed by Dr. A.A. Vissa), and Applicant filed an amendment in response to the Office action on August 24, 2005. The Amendment was executed by J.A. Sekhar (for inventors).

Applicable Law, Rules and MPEP

37 CFR 1.33, Correspondence respecting patent applications, reexamination proceedings, and other proceedings, states:

(b) Amendments and other papers . Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A patent practitioner of record appointed in compliance with § 1.32(b);
- (2) A patent practitioner not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

37 CFR 1.135, Abandonment for failure to reply within time period, provides that

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

Analysis

Office records reveal that in the application as-filed on December 4, 2003, inventors Ramgol Vissa, Venkata Burada and John Carson appointed Jayadeep Deshmukh to prosecute the application. Office records do not indicate that the power of attorney to Jayadeep Deshmukh was revoked.

37 CFR § 1.36, Revocation of power of attorney; withdrawal of patent attorney or agent, states:

(a) A power of attorney, pursuant to § 1.32(b), may be revoked at any stage in the proceedings of a case by an applicant for patent (§ 1.41(b)) or an assignee of the entire interest of the applicant, or the owner of the entire interest of a patent. A power of attorney to the patent practitioners associated with a Customer Number will be treated as a request to revoke any powers of attorney previously given. Fewer than all of the applicants (or fewer than all of the assignees of the entire interest of the applicant or, in a reexamination proceeding, fewer than all the owners of the entire interest of a patent) may revoke the power of attorney only upon a showing of sufficient cause, and payment of the petition fee set forth in § 1.17(f). A patent practitioner will be notified of the revocation of the power of attorney. Where power of attorney is given to the patent practitioners associated with a Customer Number (§ 1.32(c)(2)), the practitioners so appointed will also be notified of the revocation of the power of attorney when the power of attorney to all of the practitioners associated with the Customer Number is revoked. The notice of revocation will be mailed to the correspondence address for the application (§ 1.33) in effect before the revocation. An assignment will not of itself operate as a revocation of a power previously given, but the assignee of the entire interest of the applicant may revoke previous powers of attorney and give another power of attorney of the assignee's own selection as provided in § 1.32(b). (Emphasis supplied).

Applicant has not filed an Amendment that complies with 37 CFR 1.33(b), because the amendments were not executed by a proper party. As such the reply was not a complete and proper reply in accordance with 37 CFR 1.135.

Correspondence address

A Change of Correspondence Address was filed on November 12, 2004 and on July 14, 2005, executed by Dr. A.A. Vissa. A review of Office records reveals that no power of attorney has been filed giving Dr. Vissa - the person signing the change of correspondence address - the authority to change the correspondence address. The applicable rule, 37 CFR 1.33(a)(2), Acting in a representative capacity, states:

(2) Where a § 1.63 oath or declaration has been filed by any of the inventors. If a § 1.63 oath or declaration has been filed, or is filed concurrent with the filing of an application, by any of the inventors, the correspondence address may be changed by the parties set forth in paragraph (b) of this section, except for paragraph (b)(2).

The MPEP 601.03 further provides:

Where a correspondence address has been established on filing of the application or changed pursuant to 37 CFR 1.33(a)(1) (prior to the filing of an executed oath or declaration under 37 CFR 1.63 by any of the inventors), that correspondence address remains in effect upon filing of an executed oath or declaration under 37 CFR 1.63 and can only be subsequently changed pursuant to 37 CFR 1.33(a)(2). Under 37 CFR 1.33(a)(2), where an executed oath or declaration under 37 CFR 1.63 has been filed by any of the inventors, the correspondence address may be changed by (A) a patent practitioner of record, (B) an assignee as provided for under 37 CFR 3.71(b), or (C) all of the applicants (37 CFR 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with 37 CFR 3.71. See 37 CFR 1.33(a)(2).

A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Conclusion

Applicants have failed to demonstrate that a complete and proper reply to the Office action was filed. Applicant's have also failed to demonstrate that a proper Change of Correspondence Address was filed. The application is properly held abandoned.

Applicant is advised that, as provided in the Manual of Patent Examining Procedure,

[w]here an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned

(e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

MPEP 711.03(c).

Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning the Amendment should be directed to the Examiner. Questions regarding this decision should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
Derek L. Woods
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Office of Petitions

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